The Sun.

TUESDAY, FEBRUARY 12, 1907.
Fair and colder to-day; fair and not so cold to-morrow.

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WAS IT GEN. HENRY OR GEN. ROE?

ADJUTANT-GENERAL PRODUCES WENDEL CASE DOCUMENTS.

Obtained Gov. Hughes's Permission to Lay Them Before the Court of Inquiry—Gen. Roe Recommended Letting Wendel Resign and Calling Off the Court

The session of the military court of inquiry in the case of Capt. Louis Wendel, First Battery, N. G. N. Y., accused of extorting part of their wages from employees in the armory, opened in a rather unexpected way at the armory yesterday, when Adjutant-Gen. Nelson Henry, with Gov. Hughes's permission, demanded to be sworn and read an interesting statement.

Gen. Henry granted a discharge to Capt. Wendel and a dismissal of the court of inquiry and was exposed to much criticism afterward for it, especially when the Governor revoked the order. He said to the court yesterday:

"The many misstatements and varied criticisms concerning my action in regard to Capt. Wendel's resignation have remained uncorrected and unanswered, awaiting this opportunity to place before this military court the true facts in the case."

He submitted first this letter from Gen. Roe, Major-General commanding, dated from the headquarters of the National Guard of New York on January 23:

I have the honor to inclose herewith an application from Capt. Louis Wendel, First Battery, N. G. N. Y., requesting that S. O. 188, A. G. O.'s, 1907, convening a court of inquiry at his request be revoked, and the resignation of Capt. Wendel from the National Guard.

For the reasons contained in my indorsement upon the request to revoke the order for the court, I strongly recommend that the discharge be granted as speedily as possible. If this be done, as soon as I am advised of it by you, I will detail First Lieut. John F. O'Ryan, Second Battery, to command the First Battery, acting under the authority of R. 48, and receipt for the property for which Capt. Wendel is responsible.

In view of all the circumstances with which you are thoroughly cognizant, I think you will agree with me that it is better to discharge Capt. Wendel at once by order, holding the matter of a full and honorable discharge, provided for in MC. 62, in abeyance until it be ascertained that his accounts for money or for public property be correct.

Capt. Wendel's letter of resignation sets forth age and length of service as reasons for resigning. Gen. Roe's indorsement of this reads:

The offences which Capt. Wendel asked to be inquired into have been taken cognizance of by the criminal authorities and he has been indicted by the Grand Jury of New York and his trial is now pending. If he is guilty he will be punished in those proceedings. He has served in the National Guard more than twenty-five years, and in view of that fact and for the good of the service I make the foregoing recommendation, and further recommend that his resignation be accepted and that he be discharged at once.

"These communications," said Gen. Henry, "were received at the Adjutant-General's office January 24. Upon the same date the office received an additional communication from the commanding officer National Guard recommending that the First Battery be simultaneously disbanded." This letter was:

I have the honor to recommend that the First Battery, N. G. N. Y., be disbanded for the following reasons: Artillery is a very expensive branch of the service and in the nature of things would rarely, if ever, be used in State duty. The condition of the First Battery is such that I am convinced that it would be to the very best interests of the service to disband it. The Field Hospital now occupies a portion of the First Battery, and has so much equipment that it will require an armory of the size of that now occupied by the First Battery. The disbandment of the battery will do away with a valueless organization and furnish adequate quarters for a very valuable adjunct to our service and will have a salutary effect on the entire Guard.

That letter from Gen. Roe was considered by Gen. Henry, who answered in the following terms:

The disbandment of this organization at the present time pending the proceedings and the report and action with recommendations of the court of inquiry might tend to impair the ends of justice, as it would place the members, exclusive of the officers, without the pale of the military authorities.

Gen. Henry was puzzled over what he ought to do with Capt. Wendel's resignation and he wrote to Gen. Roe on January 25:

This office is in receipt of your communication, as well as the resignation and request of Capt. Wendel. At the time you communicated with me over the phone yesterday I was giving the matter my consideration; but the more carefully I look into the subject the more puzzled I am as to what proper course to take, which will be just and at the same time meet the circumstances and be perfectly legal.

I believe the question of action in the case of Capt. Wendel is one that should be very carefully considered to avoid any embarrassment or misunderstanding and would appreciate having an opportunity to confer with you and, if you see fit, jointly with Col. Ladd.

There is no question in my mind but that the acceptance of an officer's resignation becomes operative and severs him from the military service upon his having received either actual or constructive notice of such acceptance.

The matter is so full of so many complications, and remembering that the Governor denied the request of Capt. Wendel to have proceedings of court of inquiry deferred until termination of criminal proceedings, I would not feel justified in taking any action unless absolutely convinced as to its legality, or submitting the matter to the Commander-in-Chief.

"In this connection I would mention," said Gen. Henry yesterday to the court of inquiry, "that the Major-General assured me that the rumors regarding the condition of the battery were untrue and unfounded, that he had caused an investigation to be made by two of his staff officers and they had found nothing wrong, but had made one or two suggestions which would improve methods and spare unwarranted criticism. Next, I submit another communication of date January 24 from the commanding officer, National Guard, recommending the discharge of Capt. Wendel:

After a conference with Col. Ladd, I am of the opinion that as Capt. Wendel is under charges before a civil tribunal, which if proven guilty of, would make him subject to military charges, if then an officer, he should not receive an honorable discharge. Therefore, the order, if issued, should say his resignation is accepted and he is hereby discharged. Subsequently, if the civil charges amount to nothing, he could receive a full and honorable discharge, in the discretion of the Governor. At the present time, he should get nothing but a copy of the order discharging him.

"Finally, I submit," said Gen. Henry, "under date of January 26, the waiver of Capt. Louis Wendel of a full and honorable discharge, agreeing to accept such discharge as may be given him." This was forwarded by and approved by the commanding officer National Guard and is:

If my resignation is accepted I hereby waive all right to a full and honorable discharge and agree to accept such discharge as may be given to me. Respectfully,

LOUIS WENDEL.

Respectfully forwarded approved.

CHARLES F. ROE, Major-General.

Then Gen. Henry quoted two newspaper interviews, dated January 31 and February 1, in the first of which Gen. Roe was quoted as having declared that he had made no comment on the resignation of Capt. Wendel and that he did not advise the Adjutant-General in the matter. "There was no suggestion or comment made in the Wendel case by me. I passed the matter along to Gen. Henry because it was for him to act on and not me," Gen. Roe is quoted as saying.

In the other article, under an Albany date line, is the following: "With the statement of Major-Gen. Roe of the National Guard that he made no recommendation on the subject to Adjutant-Gen. Henry and with Gov. Hughes rescinding the order, Gen. Henry is looked to for an explanation."

To wind up with, Gen. Henry declared: "Neither by word or letter, directly or indirectly, have these interviews been denied nor these statements repudiated, nor any explanation been vouchsafed, so to-day they stand without contradiction in the minds of the people as authentic. And now I am willing to let the public determine the answer to the insistent question, 'Where did the initiative originate?' In conclusion I wish to thank most heartily the Commander-in-Chief, Charles E. Hughes, for the privilege of appearing before this court to make the preceding statement."

That ended Gen. Henry's address and he left the room immediately.

The court then resumed the inquiry abruptly broken off last month. Several witnesses, employees in the armory, repeated the testimony heretofore given elsewhere that they had "given up" to keep their jobs.

The Governor's cause the revocation of the order discharging Wendel and stopping the inquiry. It had been signed in the customary form "by order of the Governor," and as he had given no order in the matter he held it to be void.

Gen. Roe declined last night to discuss the Adjutant-General's statement.

By the way, Capt. Wendel has not been indicted. He was arrested and held for the Grand Jury, which began an investigation yesterday. Lieut. Fuchs, who was the treasurer of the organization, was the first witness called. Following him came Sergt. Jansen.

ANOTHER SHOCK AT KINGSTON.

Salvage of Steamers Grounded on Rocks Nearby Considered by Experts.

Special Cable Despatch to THE SUN.

KINGSTON, Jamaica, Feb. 11.—There was another heavy shock of earthquake here to-night, but no casualties resulted.

The tug Rescue will start to-morrow for Newport News, having in tow the steamer Corinth, which she recently hauled off Grand Cayman Island.

American wrecking experts are here studying the chances of saving the Hamburg-American line steamers Prinzessen Victoria Luise and Prinz Waldemar, which lately stranded at the mouth of the harbor

EARTH IN A STATE OF UNREST.

Laibach Seismographs Register Continuous Tremblings—Cyclone About Malta.

Special Cable Despatch to THE SUN.

LONDON, Feb. 11.—Prof. Belar telegraphs from Laibach that the seismographs at the observatory there have registered since February 9 very strong earth unrest which seems to be connected with a cyclone in southern Italy and Malta.

There was an earthquake this morning, the centre of which was 188 miles from Laibach. Prof. Belar says that the continuous unrest may result in further earthquakes in the near future.

EARTHQUAKE IN VIRGINIA.

Disturbances Moving From North to South Felt Over Wide Area.

RICHMOND, Va., Feb. 11.—News received at the Chesapeake and Ohio Railroad general offices this morning tells of an earthquake along the line of the James River division, between Bremo and Rock Castle, and also along the Buckingham branch this morning.

At 8:22 o'clock Station Master Ansell, at Bremo, felt the earth tremble. The quivering increased and the disturbance lasted several seconds.

Inquiry up and down the road disclosed that no tremor was felt above Bremo or below Rock Castle. Ansell is of the opinion that the shock was travelling from north to south and between these points.

At Arvonia, where there are large slate quarries, the people became panic-stricken. The negroes quit work in the quarries, believing that judgment day was at hand. Around Bremo, Columbia and Rock Castle the people were greatly excited. No cracks were noticed in the veins of slate in the quarries and no house in the city was damaged.

Vibrations were felt at Columbia, scores of people leaving their homes.

Berlin Heights, a suburb of Richmond, across the valley from the city, also felt the shock.

A report from Washington says the Government instruments did not record any earthquake disturbance to-day.

CANNON WON'T BE HERE TO-DAY.

By Advice of His Physician He Will Not Attend the Lincoln Dinner.

WASHINGTON, Feb. 11.—Speaker Cannon called the House of Representatives to order to-day, but shortly afterward surrendered the chair and spent most of the afternoon in his room. He had expected to attend the Lincoln dinner of the New York Republican Club to-morrow and talk for a few minutes with Lincoln for a text, but on the advice of his physicians has decided not to risk the journey. A special car leaving here at 11 o'clock to-morrow will carry a Congressional party of a dozen or so to New York to attend the dinner, including Representative McCall of Massachusetts, who will be the principal orator from the national legislature.

NO RECOUNT LEGISLATION.

THAT IS, NONE DEALING WITH THE MAYORALTY ELECTION.

But a Recount Bill May Be Passed to Deal With Future Cases—Assembly Judiciary Committee Said to Be Opposed to a Bill for Recount of Mayoralty Vote.

ALBANY, Feb. 11.—While it was generally agreed that the Republican Senators who constitute the old guard could be the cause of blocking the more drastic of the recommendations made in the Governor's message to the Legislature, it develops that there are a good many Assemblymen who are not in accord with some of the Governor's views, and unless the unexpected happens Gov. Hughes will not get a number of the recommendations he made enacted into laws. Just now it is somewhat generally admitted that there will be no recount legislation dealing with the Mayoralty situation in New York city. There probably will be a recount bill passed, but it will only be to take care of future cases.

Immediately after the Governor's recommendations became known to the legislators there was some haste to get in bills which were thought would cover those recommendations. Senator Saxe and Assemblyman Murphy introduced the recount bill of last year, and later on Assemblyman Prentice and Senator Saxe introduced a recount bill which had been drawn by William Ivins and ex-Judge Cohen.

Assemblyman Charles W. Read of Albany is the chairman of the Judiciary Committee, which is considering the recount bills, and it is known that William Barnes, Jr., the local Republican leader, doesn't regard such legislation as showing good judgment from any standpoint the subject is viewed. One of the most influential members of the Assembly made this statement to-night:

"While I haven't polled the Judiciary Committee, still I know to a certainty that the sentiment of the majority of the committee is opposed to a recount bill dealing with the last New York city Mayoralty election. The situation is just this: This election was held almost eighteen months ago and the boxes have been hauled around and been in different hands. Now, what was to hinder somebody from getting access to a number of the boxes and doing some tampering? None that I can see, and I think the members of the Judiciary Committee appreciate this fact, too.

"Some Republicans think it would be good politics to open the boxes and have a recount, but the majority of the members are not of that opinion. If Mr. Hearst believes he has been defrauded of the election as Mayor the same avenues are open to him as are open to any other defeated candidate—that is, the quo warranto proceedings. The recount bill would establish a precedent that would have a bad effect in the future. It would mean that in any election where the vote was close the defeated candidate would cause the man who was elected on the face of the returns to spend considerable money to get his office by defending himself from such proceedings, even where there was no intimation of fraud."

Senator John Raines several weeks ago announced that he had drawn a recount bill and that it would differ from his bill of last year in that it would be shorter. To-night it is understood that Senator Raines's bill will only amend the law so as to deal with future cases.

RAMS FERRYBOAT HUDSON CITY.

The John H. Starin Has to Tow Her Into Her Slip.

The Long Island Railroad's ferryboat Hudson City was struck and badly damaged last night by the freight steamer John H. Starin of Starin's New Haven line. About twenty feet of the Hudson City's rail was carried away and a section of the women's cabin, in which were between fifty and a hundred women, was demolished. No one was hurt, but the ferryboat hands had a job preventing a panic.

The ferryboat drifted helpless for twenty minutes after the collision and was carried downstream for some distance until several railroad tugs that had been whistled for and the Starin herself fastened hawsers to her and towed her to the Long Island side.

The ferryboat left the Long Island side at 9:40 o'clock. She had to buck a tide running up and she headed downstream, hugging the shore for a block or so before swinging out. When she got opposite Flushing street she stuck the Hudson City's nose toward midstream.

She had barely got under headway when the John H. Starin loomed up on her port side, bound upstream. Before the ferryboat's course could be altered the freighter had rammed her in the port side forward. A section of the rail was carried away and dropped into the river. The John H. Starin, which was apparently uninjured, backed out and prepared to give aid.

Nearly two hundred passengers got panicky, but it was soon manifest that the ferryboat had not been damaged below the waterline. A hole of sufficient size to let in a lot of the wintry gale that was blowing was ripped in the side of the cabin.

All the women passengers were sitting on the inside row of seats, away from the windows. Policeman Wilday of the East Fifty-first street station, who was on his way to report for duty, assisted in quieting the women.

Before the tugs got to the Hudson City the Starin had got a line to her. When the tugs came up they all fastened on. After the Hudson City returned to her slip the passengers were transferred to another New York bound ferryboat and the Starin went on to New Haven.

CONSCIENCE AND $3.

Board of Education Gets Sum From Mysterious Sender.

Secretary Palmer of the Board of Education received a letter yesterday which contained a two dollar bill and a one dollar bill.

"I return these to the Board of Education because I am not entitled to them," said the unsigned letter.

"If I knew what employee of this department has such a tender conscience I'd try to have him promoted," said the secretary.

"Perhaps he was one of those recently raised in salary against the objection of Comptroller Metz," it was suggested.

KELSEY WON'T RESIGN.

Friends Say He Has Made Up His Mind Not to Retire Under Fire.

State Superintendent of Insurance Otto Kelsey will not comply with Gov. Hughes's request for his resignation. He decided on that yesterday after conferring with several of his friends in this city. Mr. Kelsey himself declined to say anything about the situation for publication, but his friends declare that he has determined now to stand firm and refuse to give up the office, as a matter of principle. This, they say, is practically the only course that Mr. Kelsey can take with justice to himself. He believes that he has administered the affairs of his office honestly and efficiently and cannot go out under fire.

The understanding has been that Gov. Hughes's gave Mr. Kelsey until to-day to decide what he would do. The Superintendent left this city last night for Albany, and it is expected that he will send his answer to the Governor to-day.

If Mr. Hughes persists in his decision to put somebody else in Kelsey's place he will have to bring charges against the Superintendent before the Senate. That, it is expected, will bring on a fight that will be a real test of the Governor's strength in that body.

James T. Rodgers, chairman of the Assembly Insurance Committee, visited the New York Life offices yesterday and inspected the vote counting process which has now been going on since December 18, with good prospects that it will be prolonged into the summer months. The members of the old Armstrong committee are to meet in Albany to-day to suggest amendments which will prevent in the future a repetition of the present vote counting fiasco, and Mr. Rodgers, it is understood, was looking for some first hand information.

INFERNAL MACHINE FOR WITTE

Found in His Bedroom Chimney—Timed to Go Off While He Slept.

Special Cable Despatch to THE SUN.

LONDON, Feb. 12.—The St. Petersburg correspondent of the *Telegraph* says that an infernal machine was discovered in the chimney of a bedroom in Count Witte's house just after midnight.

It was timed to explode in two hours, when the Count and Countess would have gone to bed.

Count Witte, who is in indifferent health, was being visited by a doctor and two friends when the discovery was made. The Countess had gone to a theatre.

KAISER'S DAUGHTER IN MISHAP.

Her Carriage Runs Over a Boy and Policeman Is Rude to Her.

Special Cable Despatch to THE SUN.

POTSDAM, Feb. 11.—A carriage containing the little Princess Victoria, daughter of the Kaiser, ran over an eleven-year-old boy to-day. He was carried into a shop and the Princess tried to follow, but she was roughly repulsed by a policeman, who told her to go about her business. A groom, however, sprang from the royal carriage and enlightened the policeman. The boy's injuries were found not to be serious.

INDICT TURPENTINE TRUST.

U. S. Court Grand Jury Returns True Bills Under the Sherman Law.

SAVANNAH, Ga., Feb. 11.—Indictments have been returned in the United States Court against the following persons and corporations for violations of the Sherman act, as the result of the investigations made by the Grand Jury in the United States Court for the last four days:

The S. P. Shotter Company, the Paterson-Downing Company, Spencer P. Shotter, president of the S. P. Shotter Company, now chairman of the board of directors of the American Naval Stores Company; J. F. Cooper Myers, vice-president and general manager of the S. P. Shotter Company, now vice-president of the American Naval Stores Company; J. R. Driscoll, domestic manager of the S. P. Shotter Company, now with the American Naval Stores Company; Herman Weibert, Savannah manager of the Antwerp Naval Stores Company, a foreign corporation with headquarters in Antwerp; W. A. Schroeder, manager of the foreign department of the Paterson-Downing Company; Harry H. Bruch, formerly Savannah manager of the Paterson-Downing Company, now with the American Naval Stores Company; Alexander Knight of London, England, of the firm of Nicoll & Knight, naval stores importers, who have been represented here by James Farie, Jr.

Bond was placed at $10,000 in each case. All of the defendants gave bond.

A new term of the United States Court begins to-morrow and the defendants will be called upon in a few days to plead to the indictments.

MUST PAY FOR THE WAKE.

Executors of McCullough's Will Are Beaten on Appeal.

Justices MacLean and Amend, sitting in the Appellate Term of the Supreme Court, reversed yesterday the decision of Municipal Court Justice Hoyer that executors of a man's estate are not liable for the expenses of food and other refreshments served at the testator's wake by his immediate relatives.

Joseph J. McCullough has a suit pending against the executors of the estate of his uncle, Peter McCullough, to recover $71.25 which Joseph spent on whiskey, cigars and sandwiches at the wake. Justice Hoyer upheld the demurrer of the executors and practically threw the suit out of court. Then Joseph appealed.

Justices MacLean and Amend ruled that the demurrer should have been overruled. Justice Gildersleeve, their associate on the Appellate Term bench, dissents from this view and in his minority opinion remarks that if the Court is to recognize such claims as the present one all executors will find themselves liable in the future for such unnecessary expenses. The decision will probably be appealed again.

Ex-Gov. Higgins Very Low.

OLEAN, N. Y., Feb. 11.—Ex-Gov. Higgins is to-night apparently very near the end, and while Dr. Hibbard will not give him up, the Governor's brother-in-law, Frank Sullivan Smith, announced shortly before leaving the hotel for the Governor's home at 8 o'clock that Mr. Higgins was very low, but it was possible that he might live through the night.

Arkansas Two Cent Fare Law Signed by Governor.

LITTLE ROCK, Ark., Feb. 11.—Gov. Little to-day signed the two cent railroad rate bill passed by the Legislature last week. The law becomes operative in sixty days.

THAW'S DEFENCE NEARLY ALL IN

About Two More Days to Wind It Up, Counsel Announces.

WAS INSANE, EXPERT SAYS,

In Answer to a Hypothetical Question Summing Up the Case.

This Question Referred to a "Serious, if Not Capital, Operation" Performed on Mrs. Thaw—Jerome Has a Midday Conference With Abe Hummel, Probably With Reference to the Affidavit Thaw's Wife Made Against Him—She Was Ready to Tell More "Tenderloin Tattle," but the District Attorney Keeps It Out for the Present—But the Note She Wrote in the Cafe Martin Does Get In—Thaw Not to Go on the Stand.

It was unexpectedly announced last evening by counsel for Harry K. Thaw, who is being tried for the murder of Stanford White, that it will take about two days more to put in the direct case for the defence. This, of course, does not take into consideration the cross-examination of Thaw's witnesses by Mr. Jerome, but it does mean that Thaw will not go on the stand.

Mrs. William Thaw, the prisoner's mother, will probably be a witness for him to-day. The cross-examination of Mrs. Evelyn Nesbit Thaw has not yet begun, and she will be called again to give further testimony for her husband.

The efforts of the defence to get in Thaw's will, which he says he made on the night of his marriage, did not succeed yesterday. It is still necessary for the defence to prove that the will is admissible at this trial.

One of Thaw's experts, Dr. Charles G. Wagner of Binghamton, swore that Thaw was of unsound mind and didn't know he was doing wrong on the night he killed White on the Madison Square Garden roof. A feature of Dr. Wagner's examination was a hypothetical question put by Lawyer Delmas.

It was one of the longest questions of its kind ever propounded in a criminal trial and really embraced a summing up of Thaw's case except for a reference or two to the evidence. It was delivered by Mr. Delmas without the aid of a note or apparently any preparation. Practically everything that Evelyn Nesbit Thaw has testified to was summed up in the question and there was a reference to a "serious, if not capital, operation" that was performed on her. There is nothing about a capital operation in the testimony as yet.

Not the least interesting development of the day was a meeting between Abe Hummel, whose name has been brought into the case prominently, and Mr. Jerome. This was at luncheon. Hummel and his former partner, Nathaniel Cohen, were sitting in a restaurant in Franklin street, when Mr. Jerome came in.

Mr. Jerome and Hummel had a brief conference in a back room. Then Mr. Jerome went back to the table where he sits with his assistants every day and made a number of notes in a little book. Another brief conference followed with Hummel, and Mr. Jerome did some more note taking.

It is known that Hummel has turned over to the District Attorney a photographic copy of the statement which Evelyn Nesbit Thaw says he dictated when she went to his office with Stanford White. The original copy was destroyed, probably at the time young Mrs. Thaw says she went to Hummel's office in search of a paper which she had signed. In the statement are charges that Thaw ill treated her and even beat her, it is understood. There is some talk that Hummel may be put on the stand as a witness in rebuttal, but it is more likely that Mr. Jerome is preparing for his cross-examination of the young woman.

She was a witness for a brief period yesterday. Again Mr. Jerome successfully stopped the introduction of any more "tittle tattle of the Tenderloin," as he calls it. But she swore that when her husband was in New York he carried a revolver, an intimation that he feared White. The note she wrote to Thaw in the Café Martin the night of the shooting was also turned over by Mr. Jerome to the defence and she identified it. It said:

"The B was here a minute ago and went out again."

She and Thaw commonly referred to White as B, she said, the B meaning blackguard.

A DAY OF LITTLE PROGRESS.

Jerome Checks Evelyn Thaw's Story and Forces Defence to New Tactics.

The defence in the Thaw trial did not make as rapid strides yesterday as on the last two days of its work last week. It wasn't for lack of trying, however. Harry Thaw's girlish wife, about whom the entire tragedy has revolved, was again a witness, but she spent most of her time sitting quietly in the witness chair and gazing in a wondering way at the lawyers and the Judge while they argued about the admissibility of certain evidence which she had been called to give.

Apparently she was just as full of stories about Stanford White's activities in Broadway life as she had been the very first morning she appeared in court, but yesterday she was not allowed to tell them. Time and again Mr. Delmas tried to frame his questions in such a way as to induce the Court to let her tell about the relations of young girls other than herself with the architect, of what she told Thaw about "the pie girl," and of what he told her about his fear that Stanford White would take his life. But in few cases was he successful.

From the very first District Attorney Jerome was alert and persistent with objections to what he called "the tattle and scandal of the Tenderloin." He maintained repeatedly and successfully that it was first necessary to prove by experts or others that Thaw's mind had been in a condition of such unsoundness that these statements from his wife would have been likely to drive him to such an insane act as the defence contends the shooting of Stanford White to have been.

Bad Day for Delmas.

Invariably the Court held with the District Attorney, and after numerous and futile attempts Mr. Delmas was obliged to abandon the attempt to get Mrs. Harry Thaw to tell her story in all its completeness. Before he dismissed her from the stand, however, he asserted that he would recall her and have her complete her narrative after he had introduced the testimony regarding Thaw's mental state which the District Attorney demanded as a preliminary.

Mr. Delmas was also unsuccessful in pinning Justice Fitzgerald down to any general ruling regarding the line of questioning to be allowed. The Court declined to rule except upon the specific question under discussion and to which Mr. Jerome had objected.

Before he dismissed Mrs. Thaw, however, Mr. Delmas succeeded in getting on the records the fact that she knew Harry Thaw to have carried a pistol habitually while in New York, after Christmas Eve, 1903. It was on Christmas Eve, 1903, it will be remembered that, according to the testimony of the ex-doorkeeper of the Madison Square Theatre, Stanford White threatened to "find and kill that —— before daylight."

It was by way of following out his promise to the Court to produce the testimony necessary regarding Thaw's mental state that Mr. Delmas then called to the stand Dr. Charles G. Wagner, the Binghamton alienist, to whom counsel propounded an enormously long hypothetical question based upon and involving most of the contentions of the defence. Some of these circumstances included in the question have been testified to by witnesses for the defence and testimony will be introduced to substantiate the rest. To this question Dr. Wagner replied that assuming all the circumstances to be as stated in the question, Thaw was irrational when he shot White.

It is expected that this line of proof will be bolstered up by Dr. Britton D. Evans and Dr. Graeme Hammond, who are also down to testify for the defence. When this has been done it is now a part of the plan of the defence to return to the line of inquiry which the District Attorney headed off yesterday.

If Mr. Jerome continues his policy of yesterday there will be no cross-examination by the prosecution until the defence has completed its direct case. Then, of course, will come what is expected to be the most delicate, difficult and important task that the prosecution has to perform—namely, the cross-examination of little Mrs. Thaw. To that will be added witnesses in rebuttal and undoubtedly an attempt will be made to attack the credibility of Evelyn Nesbit Thaw's testimony, while experts for the prosecution may be offered to attack the testimony of the Thaw medical experts.

The announcement that the defence expected to complete its case within about two days made a decided stir in court. It had been expected that this would take until the latter part of next week. Mrs. William Thaw, the defendant's mother, is not expected to testify upon any point that is not connected directly or indirectly with the condition of her son's mind. There is at the present time no reason to suppose that the defence will change its plan not to put the defendant upon the stand in his own behalf.

Women Spectators Barred.

When the court room doors were opened yesterday morning Justice Fitzgerald put a new rule into effect. From now on to the end no women will be allowed in court with the exception of those employed by the various newspapers. This, of course, puts no restriction upon the activities of the Pity Patrol, the Sympathy Squad or the Pathos Brigade. These forces, commanded by their gallant leader, Gen. the Rev. Madison C. Peters, will of course continue service to the finish.

The court room was strangely destitute of millinery yesterday, and the hippodrome air that had previously invaded the room was lacking. The result was a distinct gain in dignity. The report that some of the spectators of last week had been relatives or friends of the jurors may have had something to do with the Court's order. On the other hand, the fact that on Friday last one woman spectator got a seat next to the jury box was another likely factor. Whatever the causes, the result was admirable. At no time were the crowds in the corridors of the Criminal Courts Building or at the door of the court room as large or as noisy as they were last week.

Harry Thaw had to do yesterday without the supporting presence of any of his relatives in the court room. None of the women of the Thaw party has been present since Mrs. Harry Thaw first went upon the witness stand, and yesterday even Josiah and Edward Thaw were absent. From the spectacular point of view it was an off day. Even the long winded engagements of the District Attorney and the veteran lawyer from the Pacific Slope were conducted most politely and considerately, and the sparks did not fly once.

For the first time, however, there was some visible mental telegraphy between Mrs. Harry Thaw and her husband. After she first appeared there was a long pause in her testimony while the lawyers argued. In this interval Harry Thaw appeared to pay no attention to the legal controversy. Probably it meant as little to him as it did to the slender girlish occupant of the witness chair. Instead of following the controversy of the men of law he looked long and lingeringly at his wife and smiled at her cheerily and unmistakably, as one who should say: "Cheer up. The worst is over. I hope we shall soon be out of the woods."

Little Mrs. Thaw did not look at her husband for many seconds at a time, but as her eyes roved about the court room they rested frequently upon him. As for him, he seldom took his eyes from her, and when he did they soon returned. There was sympathy in his glance and affection and pity as well.

Though to-day is a public holiday, court will sit as usual, in conformance with an arrangement made last week.

Jerome Starts Right In With Objections.

The morning session hadn't been going very long before Mr. Jerome bobbed up with the first of a string of objections. Mr. Delmas, continuing in command of the Thaw forces, called as the first witness of the day, not Evelyn Nesbit Thaw, who was still under direct examination when court adjourned on Friday, but John Denniston Lyons, vice-president of the Union National Bank of Pittsburg, an institution which has transacted considerable business for the Thaws and for Harry Thaw in particular. He had got only far enough to explain who he was and what was his business when the District Attorney hopped up and remarked, as if somebody had deeply grieved him:

"I don't know why this witness was called. I object to this interruption and think they should complete with the witness they had on the stand unless some special reason is given."

The Court also wanted to know about it, and Mr. Delmas replied that on Friday when court adjourned Harry Thaw's will was not in evidence because the Court held that it had not been sufficiently identified. He was offering Mr. Lyons's testimony for the purpose of further identifying it.

Then followed a long dispute, Mr. Delmas recalling the fact that he had been prevented from asking young Mrs. Thaw some questions about what she had told her husband about Stanford White's relations with young girls other than herself, because the Court had ruled that further evidence of Thaw's insanity must first be submitted. He declared that the will, if it was admitted, would furnish such proof.

"I said this then and I repeat it now," put in Mr. Jerome, "that if the defendant proposes to rely as evidence of insanity upon the declaration of this witness made prior to the homicide, why then I have no objection to it, for however undesirable it might be to have it spread upon the records of the court, yet it would be admissible, but if there was other evidence tending to show the unsoundness of mind of this defendant, then that evidence should be produced before this evidence is spread upon the record in full, and I invoked your Honor's discretion in the matter."

Not Dictating, Says the District Attorney.

Mr. Delmas thought that the District Attorney was trying to intrude upon counsel for the defence his own order of proof and was insisting that they should produce their expert witnesses at that time. The District Attorney disclaimed any intention of dictating the order of proof.

"Therefore," said he, "all through the narration of Mrs. Thaw, except to make sure that she claimed to have told her husband all the facts she narrated, I made no interruption. I did not object to any evidence of that character—an enormous quantity of it from her lips, of an appalling character—but now when they attempt to show by documentary evidence and by further narration testimony which is only cumulative on that point, I say that in the exercise of sound discretion there should be some change.

"The Court is not an expert in questions of unsoundness of mind nor can the Court say judicially that the stories discussed between Evelyn Nesbit Thaw and her husband about the conduct of a man who is dead could affect his mind. Before we go further in reference to a man whose lips are sealed by death caused by this defendant, who has thousands of friends in this community——"

"If your Honor please," interrupted Mr. Delmas, "I must take exception to these statements."

"Are they not true?" inquired the District Attorney mildly. Mr. Delmas explained that he objected to the statement by Mr. Jerome before the jury of facts that were not in evidence. Mr. Jerome again objected to hearing any of this testimony until some expert had testified that statements of the character desired to be introduced had the effect a year and more later of inducing this homicide.

All the talk wound up in a brief little private talk between Mr. Jerome and Mr. Delmas, at the end of which counsel for the defence announced that the District Attorney had consented to the continuance of the examination of the present witness.

The Will Produced.

Mr. Lyons said that he had done business for Harry Thaw ever since he was of legal age. Counsel handed him a big fat envelope, which he examined and then said that he first saw it some time before April, 1906; that it was sealed and apparently contained a package. Harry Thaw himself gave it to him and the writing on the envelope was Thaw's. It read: "Last will and testament of Harry K. Thaw."

The witness said he deposited the envelope in his box at the Safe Deposit and Trust Company's office, in Pittsburg. It remained there until last November, when he took it out. It was then in the same condition as when he deposited it. He gave it to his stenographer with certain instructions, which the Court would not allow him to repeat. Apparently those instructions were to send the document to John B. Gleason of Harry Thaw's counsel, the killing of Stanford White having taken place since the will was first taken in charge by Mr. Lyons.

Mr. Jerome's cross-examination was brief but sharp. He asked if the witness had at home some letters of Harry K. Thaw. The banker said that he had and Mr. Jerome asked him if he would send them to New York.

Mr. Delmas did not see how any arrangement of that kind was possible.

"Then," said Mr. Jerome, "I shall have to get at their contents by secondary evidence and until I do I ask that the examination